

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of the State of Texas, *et al.*,

Defendants.

CIVIL ACTION NO.

3:21-cv-00259-DCG-JES-JVB

[Consolidated Action: Lead Case]

**PLAINTIFFS' JOINT NOTICE REGARDING THE COURT'S
DECEMBER 5, 2022 ORDER (DKT. 665)**

Plaintiffs¹ file this joint notice pursuant to the Court's December 5, 2022 Order and provide their availability for a potential first-phase trial. Dkt. 665.

I. Factual Background and Plaintiffs' Availability for Trial.

LULAC Plaintiffs brought the instant action on October 18, 2021, alleging that all four of the statewide redistricting plans enacted by the Texas Legislature in 2021 violated the Voting

¹ Plaintiffs are LULAC, *et al.*, ("LULAC Plaintiffs") (Dkt. 338); Abuabara, *et al.*, ("Abuabara Plaintiffs") (Dkt. 613); Mexican American Legislative Caucus ("MALC") (Dkt. 319); Brooks, *et al.*, (Dkt. 612); Texas State Conference of the NAACP ("Texas NAACP") (Dkt. 646); Fair Maps Texas Action Committee, *et al.*, ("Fair Maps Plaintiffs") (Dkt. 502); the United States of America (Dkt. 318); Martinez-Fischer (Dkt. 504); and Plaintiff-Intervenors Johnson, Jackson-Lee, Green, and Crockett ("Congressional Intervenors") (Dkt. 619).

Rights Act of 1965 and the Fourteenth Amendment of the U.S. Constitution. *See* Dkt. 1. Over the next two months, the United States and several additional groups of Private Plaintiffs either filed actions that were consolidated with this lawsuit or intervened in this lawsuit. All nine consolidated cases challenge the 2021 congressional redistricting plan, and LULAC Plaintiffs and MALC challenge the 2021 State Board of Education (“SBOE”) redistricting plan.

On December 17, 2021, the Court issued a scheduling order, Dkt. 96, setting a trial schedule that it later amended on December 27, 2021, Dkt. 109. On August 30, 2022, the Court vacated that trial schedule. Dkt. 569.

On December 5, 2022, the Court directed the parties to provide their availability for a potential first-phase trial, which would address the congressional and SBOE plans. Dkt. 665.

Plaintiffs respectfully submit that, for the following reasons, any trial date before April 2023 may not be feasible.

First, Plaintiffs will be unable to update their expert reports to include data related to the November 2022 General Election and current demographic data until March 2023. Those data include November 2022 General Election precinct-level election results and voter information—which the Texas Legislative Council expects to make available by the end of January 2023—as well as the U.S. Census Bureau Citizen Voting Age Population (CVAP) Special Tabulation from the 2017-2021 5-Year American Community Survey (ACS), which Plaintiffs expect will be released in early February 2023.

Second, there remain twenty-one discovery-related motions in this case pending before this Court or other courts, and proceeding to trial would require the resolution of the discovery disputes related to these motions. Exhibit A lists these pending motions. Plaintiffs note that the briefing schedule for several of these motions depends on the earlier of either the Fifth Circuit

lifting the stay of this Court's July 25, 2022 Order enforcing the United States' subpoenas *duces tecum* to legislators, the Lieutenant Governor, and legislative staff (Dkt. 467), or a decision in *LULAC Texas v. Hughes*, No. 22-50435 (5th Cir.). *See* Dkt. 652.² Even with a swift ruling on these and the other pending motions (and possible appeals), any ruling in favor of disclosure would require additional time for production of documents or depositions and potential *in camera* review by the Court of documents or deposition testimony, as well as time for Plaintiffs to disclose supplemental expert reports based on the new evidence, if any.

Third, the State's motion to dismiss LULAC Plaintiffs' complaint remains pending (Dkt. 398), and resolution of the motion will determine the scope of the legal claims and evidence LULAC Plaintiffs will present at trial.

In light of the aforementioned factors, Plaintiffs respectfully submit that a trial before April 2023 would not be feasible, and respectfully request that the Court consider the week of June 5, 2023—during which all Plaintiffs are available—as a possibility in scheduling the trial. Plaintiffs further respectfully submit that although all Plaintiffs are available the week of March 20, 2023, for the same reasons a trial setting in that week may not be feasible.

Pursuant to the Court's Order, Plaintiffs' availability for trial is as follows:

All Plaintiffs are available for trial during the following:

- Week of April 10, 2023 (Begins Tuesday, April 11, 2023)
- Week of May 29, 2023 (Begins Tuesday, May 30, 2023)
- Week of June 5, 2023³

² Specifically, the Legislators' response briefs are due fourteen days after the earlier of those two events, and Plaintiffs' replies are due seven days after the Legislators' respective response briefs are filed. *See* Dkt. 652 at 1.

³ Although the week of June 5, 2023 was not included in the Court's order, Plaintiffs indicate their availability for this week in an effort to identify additional trial time for the Court.

Various Plaintiffs are not available for trial during the remaining weeks indicated by the Court, due to international travel already booked, expert unavailability, or trial dates already scheduled in other matters. Congressional Intervenors further note that during the weeks of March 20, 2023, March 27, 2023, and May 1, 2023 Congressional Intervenors Jackson-Lee, Green, and Crockett will be in session according to the current Congressional Calendar (which could be changed once a new Speaker has been elected).

II. Additional Considerations Related to Trial Scheduling.

In an effort to ensure all parties have sufficient time for presentation at trial, Plaintiffs respectfully submit the following for the Court's consideration in setting a trial schedule and outlining trial procedures.

a. Additional Time for Trial

In its December 5, 2022 Order, the Court noted that “at least two weeks should be reserved for the first phase” of trial. Dkt. 665 at 2. Given the claims of all nine plaintiff groups, Plaintiffs respectfully submit that a trial regarding the congressional and SBOE plans would require three full weeks.

b. Extended Day and Saturday Availability.

Plaintiffs respectfully propose that the Court consider holding trial on an extended daily schedule—including a prompt morning start and continuing into the late afternoon or early evening—as well as on the Saturdays that follow the dates provided in the December 5, 2022 Order. *See* Dkt. 665. For example, trial the week of April 10, 2023 (to start Tuesday, April 11, 2023) could include Saturday, April 15, 2023. All Plaintiffs are available for trial on Saturdays at the end of the following weeks: April 10, 2023; May 29, 2023; and June 5, 2023.

c. Taking Witnesses Out of Order.

Plaintiffs note that the 88th Texas Legislative Regular Session is scheduled to start on Tuesday, January 10, 2023 and end on Monday, May 29, 2023. During that time, witnesses serving in or employed by the Legislature may have varying availability. To accommodate the schedules of witnesses, and to ensure maximum availability of counsel, Plaintiffs may seek leave of the Court to conduct a minimal number of witness examinations out of order.

d. Written Opening and Closing Statements.

Plaintiffs respectfully propose that the Court require that opening statements be in written form and closing statements be held on additional trial days after the close of evidence, so as to maximize time for presentation of witnesses during trial. In the alternative, Plaintiffs respectfully propose that the Court require that opening and closing statements be entirely in written form.

III. Conclusion

Plaintiffs respectfully submit the foregoing joint notice pursuant to the Court's December 5, 2022 Order. Dkt. 665.

DATED: December 15, 2022

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 15th day of December 2022.

/s/ Nina Perales

Nina Perales